IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Court's Order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Appeal No. 175 of 2007
(Old No. 875 of 1988)

Date of decision :-23.10.2007

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :-23.10.2007
Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARAKHAND, AT NAINITAL
Criminal Appeal No. 175 of 2007
(Old No. 875 of 1988)

Laxman Singh
S/o Bishan Singh
R/o Village Kimoli Patwari Kshetra Gurna
Tehsil Bageshwar,
District Almora .....Appellant

Versus

State ..... Respondent

Mr. B. D. Upadhyay, Advocate with Mr. Ganesh Kandpal, advocate for the appellant.
Mr. G. S. Sandhu, Govt. Advocate for the respondent-State.

Dated :- 23rd October, 2007

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J. C. S. Rawat, J.

Per Hon'ble J.C. S. Rawat, J.

This appeal has been directed against the judgment and order dated 05.04.1988, passed by Sri Mohan Singh, the then Sessions Judge, Almora in Sessions Trial No. 56 of 1987, whereby the accused-appellant has been convicted & sentenced to undergo imprisonment for life and seven years R.I. under Section 302 I.P.C. and 307 I.P.C. respectively. It was further directed that both sentences would run concurrently.

2. The facts, in nutshell, are that after retirement from the military, the accused-appellant was residing with his family in his village Kimoli, Patwari Kshetra Gurna, Tehsil Bageshwar, District Almora. There were three rooms in the house of the appellant, out of which, the left hand side room was occupied by the appellant alongwith his wife and three children; right hand side room was occupied by his father-Bishan Singh PW1 and

Mother Smt. Devki Devi – injured witness; and the middle room was vacant. In the intervening night of 12/13th August, 2007, the accused-appellant alongwith his wife, two sons and one daughter was sleeping in his room. At about 2:30a.m. in the night, the accused-appellant raised alarm that his sons and wife have been killed. On hearing the alarm, the residents of the village came to the house of accused-appellant and found that the accused-appellant was standing outside the house whereas his son Shekhar (deceased) was bloodstained *'Khukari'* (a sharp edged weapon) in his hand. The people assembled there and asked him to throw the 'Khukari' which he was holding in his hand, but the appellant denied. Ultimately, on repeated requests of his father, the accused-appellant threw it. Thereafter, the accused was overpowered and tied by the residents of the village. It was found that Smt. Dhanuli Devi – wife of the appellant and his son Santosh were lying dead in the room occupied by the appellant and his family members. Smt. Devki Devi – mother of the appellant, who probably made an attempt to intervene, also received injury. The accused-appellant also caused injuries to his daughter Km. Uma. Information regarding this incident was sent to the Pradhan of the village by one Hayat Singh. The Pradhan of the village sent a person to call the Patwari, but the Patwari was not available at the headquarter. The Village Pradhan prepared the written report Ex.K.7 and sent it to the Tehsildar, Bageshwar. Thereafter, the Tehsildar directed the Kanoongo, Kafaligair to visit the spot and do the needful. On the basis of the written report Ex.Ka.7, a chick report

Ex.Ka.8 was prepared. The investigation was taken up by Sri Bahadur Ram Tamta, Kanoongo. The I.O. visited the place of occurrence, prepared the inquest report, sent the dead bodies for postmortem and recorded the statement of the witnesses. After completing the investigation, he submitted the chargesheet Ex.Ka.29 against the accused-appellant before the court.

3. After submission of the chargesheet, the accused/appellant was committed to the court of Sessions for trial and the trial court framed charges under Sections 302 and 307 I.P.C. against the accused-appellant. The accused-appellant pleaded not guilty and claimed to be tried.

4. The prosecution in support of its case examined as many as eight witnesses. Bishan Singh PW1 is the father of the accused-appellant. On the date of occurrence, he was residing in one of the rooms situated on the extreme right side of his house and the accused/appellant alongwith his wife and children was sleeping inside the room situated on the extreme left side of the house. Smt. Devki Devi PW2 is the mother of the accused-appellant. She is and injured witness of the incident. Gopal Singh PW3 is the witness who has handed over the written report prepared by Laxman Singh PW7, the Pradhan of the village of Kanoongo. Dalip Singh PW4 and Ramesh Singh PW5, who are the residents of the village, heard some noise from the house of appellant in the mid night of 12.08.1987 and reached at the spot. Dr. N.D. Punetha PW6 is the medical officer who conducted the postmortem on the dead bodies of the deceased persons. He also

examined the injured persons. Laxman Singh PW7, Pradhan of the village has prepared the written report Ex.Ka.7. Bahadur Ram Tamta PW8 is the investigating Officer of the case and he submitted the chargesheet Ex.Ka29.

5. The accused-appellant was examined u/s 313 Cr.P.C. and pleaded not guilty to the offence. He has further stated in his statement recorded under section 313 Cr.P.C. that the villagers and his parents were not happy with him, as such, he has been falsely implicated in this case. He has further stated that he was not sleeping in the room where the dead bodies were found.

6. The learned Sessions Judge on appreciation of the evidence held the accused-appellant guilty, and convicted and sentenced him as mentioned above.

7. We have heard learned counsel for the parties and perused the record.

8. It needs to be mentioned here that it is not disputed that deceased Santosh died on account of ante-mortem injuries sustained by him on the date of occurrence. Dr. N. D. Punetha PW6, Medical Officer conducted the postmortem of deceased Santosh on 14.08.1987 at 11 a.m. and found following ante-mortem injuries on the person of deceased Santosh:-

(1) Incised wound 6cms x 2cms x bone deep present on the left side of the cheek, extending from lateral angle of the mouth to the tragus of the ear.

(ii) Incised wound 6cms x 2cns x bone deep present on the left side of the mastoid region.

(iii) Incised wound 7cms x 2cms x bone deep present on the occipital region of head present transversely.

(iv) Incised wound 3cms x 2cms x muscle deep present on the nap of the neck.

(v) Incised wound 3cms x 2cms x muscle deep present on the left side of the hand.

On internal examination, it was found that the bones under injury nos. 2 & 3 were fractured. In the opinion of Medical Officer, the death of deceased was caused due to come resulting from ante-mortem injuries. The medical officer also proved the postmortem report Ex.ka.3.

9. Deceased Smt. Dhanuli Devi died on account of injuries sustained by her on the date of occurrence. Dr. N. D. Punetha PW6, Medical Officer conducted the postmortem of deceased Smt. Dhanuli Devi on 14.08.1987 at 11:30a.m. and found following ante-mortem injuries on he person of deceased Smt. Dhanuli Devi:-

(i) Incised wound 14 cm x 2 cm x muscle deep present on the neck extending form left side of the medial border of the stereo mastoid to the right side of the medial border of the stereo mastoid. Margins are clean cut and well defined. Muscles were cut. Traches was cut. Vessels were cut.

(ii) Incised wound 6cms x 2cms x bone deep present on the left side of the parietal bone.

(iii) Incised wound 5cms x 2cms x muscle deep present on the left side of the deltoid muscle.

(iv) Incised wound 5cms x 2cms x bone deep present on the left side of the hand.

On internal examination, it was found that the bones under injury no.2 were fractured. In the opinion of Medical Officer, the death of the deceased was caused due to shock and haemorrhage resulting from the ante-mortem injuries.

10. Deceased Shekhar also died on account of injuries sustained by him on the date of occurrence. Dr. N. D. Punetha PW6, Medical Officer conducted the postmortem of deceased Shekhar on 14.08.1987 at 11.30 a.m. and found following ante-mortem injuries on the person of deceased Shekhar:-

(i) Incised wound 10cms x 2cm x bone deep present on the left side of the neck extending from lateral angle of the mouth to the tragus of the ear. Lower jaw was cut.

(ii) Incised wound 10cms x 2cms x bone deep present on the occipital region of head transversely. Margins were clean cut, well defined.

(iii) Incised wound 3cms x 1cm x muscle deep present on the nape of the neck.

(iv) Incised wound 4cms x 2cms x bone deep present on the left side of the anterior aspect of the shoulder joint.

(v) Right side of the thumb and index finger were cut.

On internal examination, it was found that the bone under injury no.2 was cut. In the opinion of Medical Officer, the death of the deceased was caused due to shock and haemorrhage resulting from the ante-mortem

injuries. The Medical officer also proved the postmortem of the dead body of the deceased Ex.ka.5.

The medical officer was of the opinion that the deaths of Santosh, Smt. Dhanuli Devi and Shekhar had taken place at about 1½ days ago and it was quite probable that the deaths occurred in the night between 12/13th August, 1987. It was opined that the injuries were caused by the sharp edged weapon.

11. Injured Km. Uma was examined by Dr. N. D. Punetha, Medical Officer on 17.08.1987 at 11:30a.m. and the following injuries were found on her person:-

(i) Incised wound 4cm x 2 cm x bone deep present on the left side of the forehead vertically. Pus was present on the wound.

(ii) Incised wound 4cm x scalp deep, transversely present on the forehead in the middle. Margins were clean cut and well defined. Pus was present on the wound.

(iii) Incised wound 2, ½ cm x 1cm x muscle deep present on the right side of the arm, anterior aspect in the middle.

In the opinion of the medical officer, these injuries were about 4½ days old.

12. On the same date, the medical examination of Smt. Devki Devi was also conducted by Dr. N. D. Punetha at 11:45a.m. who found the following injury on her person:-

(i) Incise wound 5cms x 2cm x muscle deep present on the left side of the palm extending from base of the lower phalanx of the thumb to the

wrist joint. Margins were clear cut. Pus was present on the wound.

In the opinion of the medical officer, the said injury was also about 4½ days old. It was opined that the injury was caused by sharp edged object.

13. Thus, it is amply established that deceased persons, namely Smt. Dhanuli Devi, Santosh and Shekhar died in the intervening night of 12th & 13th August, 1987. It is also not disputed that injured Km. Uma and Smt. Devki Devi PW2 also sustained injuries on their persons on the date and time of the incident as pointed out by the prosecution. In the opinion of the Medical Officer who conducted the postmortem on the dead bodies on 14.08.1987, the deaths of Smt. Dhanuli Devi, Santosh and Shekhar occurred about one and a half days before. It was quite probable that the deaths occurred in the intervening night of 12th & 13th August, 1987. Km. Uma and Smt. Devki Devi were examined on 17.08.1987. In the opinion of the medical Officer, the injuries found on the persons of Smt. Devki Devi and Km. Uma were about 4½ days old.

14. Now, we have to consider as to who is responsible for causing the injuries on the deceased persons and the injured persons. The prosecution adduced the evidence of father of the appellant – Bishan Singh PW1, who has stated in his evidence that there were three rooms in his house, out of which, the left side room was occupied by the appellant alongwith his wife and three children; right side room in the house was occupied by himself and his wife Smt. Devki Devi – injured witness; and the middle room of the house was

vacant. In the intervening night of 12th & 13th August, 1987, the accused-appellant was sleeping inside a room alongwith his wife Smt. Dhanuli Devi, his sons Shekhar & Santosh and his daughter Km. Uma. In the night, when the accused-appellant raised an alarm, he came out from his room and saw that the accused-appellant was weeping and, saying that his children have been killed. Bishan Singh PW1 has further deposed in his evidence that he did not see anyone causing injuries to them. The appellant told him that two-three miscreants came inside his room and caused injuries to them. After causing injuries, they fled away from the spot. Bishan Singh PW1 had not supported the prosecution case, as such, he was declared hostile. The prosecution also adduced the evidence of Smt. Devki Devi PW2, the mother of the accused-appellant. She was said to be the eyewitness of the incident, but she has not supported the prosecution version, as such, she was declared hostile. She has stated in her evidence that she heard noise of the appellant and the appellant was crying that his family had been killed. When Smt. Devki Devi PW2 came out, she found Shekhar (deceased) lying dead outside the room and the appellant was present there. The other two deceased Smt. Dhanuli Devi and Santosh were also lying dead inside the room. She had further deposed that she had not seen any person causing injuries on the person of the deceased. She has further stated in her evidence that she did not receive any injury in the said incident and, the injury on her person found by the medical officer was received by her a day earlier when she was collecting the grass from jungle. Thus, this witness has not supported the prosecution version.

15. The prosecution also adduced the evidence of Gopal Singh PW3 who has stated in his evidence that in the intervening night of 12th and 13th August, 1987 at about 2.30 a.m., he was called from his house. He alongwith his neighbours reached at the place of occurrence and found the dead body of Shekhar lying outside the room. The accused-appellant was sitting beside the deceased Shekhar. He also found Smt. Dhanuli Devi (wife of the appellant) and Santosh (son of the appellant) lying dead in the room. Gopal Singh PW3 has further stated that he did not see any weapon in the hands of the appellant. He has further deposed that on 13.08.1987 at about 6 a.m., a written report was handed over to him by Gram Pradhan Laxman Singh. He went to the Tehsildar, Bageshwar and handed over it to the Tehsildar, who forwarded the report to Kanoongo and thereafter, he went to Kanoongo, from where he alongwith Kanoongo came to the village. The prosecution has also declared this witness as a hostile as he did not support the prosecution version. The prosecution has also adduced the evidence of Dalip Singh PW4 and Ramesh Singh PW5 who have stated in their evidence that in the intervening night of 12th & 13th August, 1987 at about 2.30 a.m., they heard hue and cry raised by the appellant and his parents. They went to the house of the appellant and found Smt. Dhanuli Devi, Santosh and Shekhar lying dead at the spot. The dead bodies were surrounded by the villagers. They have also stated in their evidence that here was a blood-stained *"Khukari"* (a sharp edged weapon) inside the room where the dead bodies of Santosh and Smt. Dhanuli

Devi were lying. Besides this, Ramesh Singh PW5 has also stated that he found that accused-appellant Laxman Singh had been tied and surrounded by the villagers. Both the witnesses, namely Dalip Singh PW4 and Ramesh Singh PW5 were also declared hostile by the prosecution as they have not supported the prosecution on the material points. According to the prosecution story, the murders of deceased namely, Smt. Dhanuli Devi, Santosh and Shekhar were committed by the accused-appellant himself. As the aforesaid witnesses have not supported the prosecution version during trial, there is no direct evidence to show that these injuries were caused by the accused-appellant.

16. Now, the prosecution case rests upon circumstantial evidence. We have to examine as to whether the prosecution could establish the guilt against the accused-appellant by the circumstantial evidence. The law, which is fairly settled about circumstantial evidence, is that it should be such as to point out only to the guilt of the accused. The evidence should exclude all other hypothesis except the guilt of the accused. It is often said that though witnesses may lie, circumstances will not, but at the same time it must cautiously be scrutinized to see that the incriminating circumstances are such as to lead only to a hypothesis of guilt and reasonably exclude every possibility of innocence of the accused. In order to sustain conviction on circumstantial evidence, each of the incriminating piece of circumstantial evidence should be proved by cogent and reliable evidence and the court should be satisfied that the piece of evidence

taken together forge such a chain wherefrom no inference other than the guilt can be drawn.

17. In light of the law enumerated above, we have to examine the circumstances projected by prosecution against the accused appellant. The first circumstance projected by the prosecution against the accused-appellant is that in the intervening night of 12th & 13th August, 1987, the appellant was sleeping inside the room with his wife, two sons namely Santosh and Shekhar and daughter Km. Uma. Smt. Dhanuli Devi and her two sons namely Santosh and Shekhar were killed whereas her daughter Km. Uma has sustained the injuries in the incident. The prosecution adduced the evidence of Bishan Singh PW1, the father of the accused-appellant who has categorically stated in his evidence that the appellant alongwith his wife Smt. Dhanuli Devi, his sons Shekhar and Santosh and his daughter Km. Uma was sleeping inside the room together. He has further stated in his evidence that the appellant came out from his room and cried that his children and wife have been killed by some miscreants and thereafter, they have fled away from the spot. It is also pertinent to mention here that the appellant alongwith his family members were present in the room and no other person was residing with them. The appellant in his statement recorded under Section 313 CrPC had tried to develop a case in his defence that he was not sleeping with his family and he was sleeping in a separate room situated in the middle of his house. The above defence statement recorded under Section 313 CrPC is not a correct statement of fact in view of the evidence of Bishan Singh PW1, who has

categorically stated in his evidence that the appellant was sleeping alongwith his children and wife in the extreme left room of the house. However, the rest part of the prosecution version has not been supported by Bishan Singh PW1. Bishan Singh PW1 and Smt. Devki Devi PW2 are the parents of the appellant and rest of the witnesses are the neighbours of the appellant. It would be the endeavour of the parents to save their son (appellant) from the conviction It would also be the endeavour of the parents that they had already lost their three family members and if they also support the prosecution theory they would also lose their son as he would be convicted by the court. It is also material if parents were not ready to give the evidence in support of the prosecution version why other person would come forward to support the prosecution. In the facts and circumstances of the case, it makes out a strong probability that the prosecution witnesses were under pressure not to support the prosecution version. Even otherwise, it is well settled that the evidence of the hostile witnesses can also be relied to the extent it supports the prosecution version. Evidence of such witnesses cannot be treated as washed off from the record. It remains admissible in the trial and there is no legal bar to base the conviction on their testimony. The very object of taking evidence is to discover the truth as far as it is humanly possible for the court to do so. The fact, therefore, that sound public policy requires that a party should not be permitted to malign his own witness, cannot and does not absolve the Court of its own high duty of attempting to discover the truth. Even when a witness deposes in favour of the case of the party calling him, the Court on a consideration of

his evidence may either believe or disbelieve him. Even in such a case, the Court has power and duty of deciding whether or not to believe the witnesses. It is also established from the evidence of Bishan Singh PW1, Smt. Devki Devi PW2, Gopal Singh PW3 and Dalip Singh PW4 that the deceased persons were found dead at the spot and the accused-appellant was found standing nearby the dead body of Shekhar outside the room. The prosecution witnesses were cross-examined at length but nothing could be elicited to discredit the above fact. The learned counsel for the appellant emphasized that Bishan Singh PW1 has attempted to explain that the appellant was shouting that some miscreants came inside the room, caused injuries and fled away from the place of occurrence. It is quite natural, if some miscreants would have entered the room with an intention to cause the injuries to the accused and his family members, the accused-appellant would have intervened in the melee and he should also have received the injuries on his person. It is also quite natural that if the miscreant entered into the room they would first try to cause fatal injury on the person of appellant. If they had failed to cause injury on other members of his family. There is no dispute that there was no injury on the person of the appellant. It is quite natural that if miscreants cause fatal injuries to his family members including his sons, he would try to save their lives and he would also sustain some injuries on his person. The absence of any injury on his person also leads to take an inference that the defence theory of entry of miscreants into the house is not credible, cogent and believable. It is also pertinent to

mention here that the accused-appellant was examined under Section 313 CrPC in which he has not stated that some miscreants entered his house and committed these murders. He remained silent about this fact. It is established by the prosecution evidence that appellant and the deceased persons were sleeping together in a room. Now, the appellant has to explain as to how the injuries were sustained by the deceased and the injured persons in the night. In the aforesaid circumstances, it was obligatory on the appellant to satisfy the Court as to how and in what manner the deceased namely, Smt. Dhanuli Devi, Shekhar and Santosh were murdered. An explanation should have come from the side of the appellant in this regard. In the instant case, the appellant has failed to discharge his onus in his statement recorded under Section 313 CrPC. He has not taken any specific stand whatsoever, on the contrary, the prosecution has been able to establish the fact that on the date of occurrence, the deceased persons were sleeping in the company of the appellant. This part of the evidence has gone unchallenged in the cross-examination of the witnesses and, therefore, we will have to proceed on the basis that the evidence of the prosecution is true. The Hon'ble Apex Court has held in the case of **Joseph Vs. State of Kerala** reported in **SCC (Cri) 2000 Page 926** as under:-

> *"14. The incriminating circumstances enumerated above unmistakably and inevitably lead to the guilt of the appellant and nothing has been highlighted or brought on record to make the facts proved or the circumstances established to be in any manner in consonance with the innocence at any rate of the appellant. During the time of questioning under Section 313 CrPC, the*

appellant instead of making at least an attempt to explain or clarify the incriminating circumstances inculpating him, and connecting him with the crime by his adamant attitude of total denial of everything when those circumstances were brought to his notice by the Court not only lost the opportunity but stood self-condemned. Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, courts have, from the falsity of the defence plea and false answers given to court, when questioned, found the missing links to e supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed (see State of Maharashtra v. Suresh). That missing link to connect the accused-appellant, we find I this case provided by the blunt and outright denial of every one and all the incriminating circumstances pointed out which, in our view, with sufficient and reasonable certainty on the facts proved, connect the accused with the death and the cause for the death of Gracy. For all the reasons stated supra, we have no hesitation to agree with the findings of the Division Bench of the High Court holding the appellant guilty of offences under Section 302 for committing the murder of Gracy and for robbing her of her jewellary worn by her – Mos 1 to 3, under Section 392. The deceased meekly went with the accused from the Convent on account of the misrepresentation made that her confidence in him in view of his close relationship – being the husband of her own sister, but the appellant seems to have not only betrayed the confidence reposed in him but also took advantage of the loneliness of the hapless woman. The quantum of punishment imposed in commensurate with the gravity of the charges held proved and calls for no are not agreeing with the High court in respect of the findings relating to the charge under Section 376."

18. The Apex Court in the case of **Mani Kumar Thapa Vs. State of Sikkim** reported in **2002 SCC (Cri) 1637** has held in para 6 as under:-

> *"6. ……. If we analyse the prosecution evidence further it is seen that in regard to traveling in the jeep from where they picked up the deceased then on to Ramam Checkpost and back, we see the appellant has given 3 different versions on 3 different occasions. To PW5 he stated that while taking the deceased towards Singla from the checkpost, he allowed him to run away from the jeep after they crossed Ramam Checkpost when A -1 had got down from the jeep to ease himself. The PW 36 he told that when they were bringing a smuggler from Darjeeling side to Ramam Checkpost i.e. from the opposite direction the smuggler escaped from the jeep and in the process of running he fell down and suffered fatal injuries. In his statement under Section 313 CrPC before the court, he stated that on 12-2-1988 he had gone to Soreng on the orders of his SP as the Chief Minister was visiting Soreng and on the evening of that day as he did not have any vehicle, he took a "lift" in the vehicle of A -1 up to Jorethang from where he went to his quarters and Accused 1 went to Naya Bazar Dak Bungalow as he was camping there on duty. These 3 different versions which are self-contradictory further show that the appellant has not been consistent in his stand as to what happened on 1 2-2-1988. This Court in the case of State of Maharashtra v. Suresh, 2000 SCC (Cri) 263 has held that a false answer offered by the accused when his attention was drawn to any inculpating circumstance would render such circumstance as capable of inculpating him. The Court also held that in such a situation a false answer can also be counted as providing "a missing link" in completing the chain. If the said principle in law is to be accepted, the statement of the appellant made under section 313 CrPC being palpably false and there being cogent evidence adduced by the prosecution to show that the appellant had given two other versions as to the incident of 12-2-1988, we will have t proceed on the basis that the appellant has not explained the inculpating circumstances established by the prosecution against him which would form an additional link in the chain of circumstances. …….***

In view of the above, this circumstance goes against the accused-appellant.

19. The next circumstance projected by the prosecution against the appellant is that the appellant was tied and surrounded by the villagers immediately after the commission of the offence. It is also in the

evidence that ‘Khukari’ was found inside the room in which the dead bodies of Smt. Dhanuli Devi and Santosh were lying. The said ‘Khukari’ was handed over to Bahadur Ram Tamta PW8. The presence of the ‘Khukari’ inside the room is proved by the evidence of the I.O. as well as by other prosecution witnesses. Ramesh Singh PW5 has categorically stated in his evidence that he saw the accused-appellant tied with rope and surrounded by the villagers. The evidence of Ramesh Singh PW5 has not been challenged during the cross-examination and that portion of the evidence is credible and cogent. Thus, this fact corroborates the prosecution story to the extent that the appellant was taken into custody and tied by the villagers. Thus, this fact leads to take an inference that the appellant was involved in the commission of the offence. If he would not have committed the murder of the deceased persons, there was no reason to tie him with rope. The Court cannot lose sight of the fact that the parents of the appellant had lost the daughter-in-law and two grandsons in the incident and now they would try to save their son so that he could not be convicted. Therefore, they did not support the prosecution version.

20. The next circumstance projected by the prosecution against the appellant is that the clothes of the appellant were stained with blood. Ramesh Singh PW5 has corroborated the fact in his evidence. These clothes were taken into custody by Bahadur Ram Tamta PW8, the I.O. The evidence of Bahadur Ram Tamta PW8 and Ramesh Singh PW5 remained unchallenged. Ramesh Singh PW5 had not been cross-examined at all

and thus the evidence given on the aforesaid fact cannot be disbelieved. The evidence of Bahadur Ram Tamta PW8, the I.O. also corroborates the said fact. The accused-appellant in his statement recorded under Section 313 CrPC had stated that there was no blood on his clothes and the same were not taken into custody by the Investigating Officer. The evidence of Ramesh Singh PW5 and Bahadur Ram Tamta PW8 is unchallenged that immediately after the commission of the offence, the appellant was wearing blood stained clothes. It is also in the evidence that the said clothes were taken into possession by the I.O. Bahadur Ram Tamta PW8. The prosecution evidence and the fact that the appellant was wearing bloodstained clothes and it was recovered from his possession immediately after the incident further reveals that he was involved in the commission of the offence and he did not explain as to how the bloodstains were present on his cloths.

21. Learned counsel for the appellant contended that even assuming that the evidence of the prosecution was found credible and cogent the appellant is entitled to get the benefit of doubt as there was no motive for him to cause injuries on the persons of deceased. Learned G.A. refuted the contention. It is well settled that in order to bring home the guilt of an accused, it is not necessary for the prosecution to prove the motive. The existence of motive is only one of the circumstances to be kept in mind while appreciating the evidence adduced by the prosecution. If the evidence of the prosecution appears to be truthful and convincing, failure to prove the motive is not fatal to the case of the prosecution. It is also well settled that

establishment of motive is not sine qua non for proving the prosecution case.

22. The Apex Court in the case of **Mani Kumar Thapa Vs. State of Sikkim** Reported in **2000 SCC (Cri) 1637** has held in para 4 a under:-

> *"4. Mr U.U. Lalit, learned counsel appearing for the appellant argued that in the absence of any motive and the corpus delicti, it is unsafe to place reliance on the circumstantial evidence adduced by the prosecution; more so when the said evidence is replete with discrepancies, omissions and improvements. He pointed out that in regard to a part of the evidence of the prosecution, the courts below themselves have not placed reliance, therefore, in a case of circumstantial evidence of this nature, it would be dangerous to base a conviction. ……Similar fate will follow the argument that in the absence of any specific motive there can be no conviction. In the instant case, PW 1, wife of the deceased, has spoken about some enmity between A-1 and the deceased. Assuming that this evidence is insufficient to establish the motive for murder even then if the prosecution is able to establish beyond all reasonable doubt from other circumstantial evidence that it is the accused (including the appellant) alone who could have committed the murder, the absence of the motive will not hamper a safe conviction. …… Having carefully considered the evidence led by the prosecution is regard to the above circumstances we are of the opinion that the courts below were justified in arriving at the finding that the appellant was guilty of the charge framed against him, and we find no reason whatsoever to disagree with this finding."*

23. In the case of **Thaman Kumar Vs. State of Union Territory of Chandigarh 2003 SCC (Cri) 1362,** the Hon'ble Apex Court has held that :-

> *"18. Shri Sushil Kumar has drawn our attention to certain findings recorded by the learned Sessions Judge and has urged that he had rightly given benefit of doubt to the appellants and the High Court committed manifest error of law in reversing the aforesaid findings and convicting and sentencing the appellants while hearing an appeal against acquittal. The learned counsel has urged that the prosecution has failed to prove any motive on the part of the appellants to commit the crime. It is true that the only witness examined on the point of motive, namely, PW 7 Sardara Singh, who is the brother of the deceased, turned hostile and did not support the prosecution case. In his statement under Section*

161 CrPC he had said that the deceased used to get commission for bringing customers to the guest house and he owed about Rs 42,000 in that account and some dispute had taken place with the owner when he had demanded his money. However, in his statement in Court he denied to have given any such statement. There is no such principle or rule of law that where the prosecution fails to prove the motive for commission of the crime, it must necessarily result in acquittal of the accused. Where the ocular evidence is found to be trustworthy and reliable and finds corroboration from the medical evidence, a finding of guilt can safely be recorded even if the motive for the commission of the crime has not been proved. In State of H.P. v. Jeet Singh 1999 SCC (Cri) 539 it was held that no doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no offence was committed if the prosecution failed to prove the precise motive of the accused to commit it, as it is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended. In Nathuni Yadav v. State of Bihar 1998 SCC (Cri) 992 it was held that motive for doing a criminal act is generally a difficult area for prosecution as one cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act and such impelling cause need not necessarily be proportionately grave to do grave crimes. It was further held that many a murder have been committed without any known or prominent motive and it is quite possible that the aforesaid impelling factor would remain undiscoverable. In our opinion, in the facts and circumstances of the case, the absence of any evidence on the point of motive cannot have any such impact so as to discard the other reliable evidence available on record which unerringly establishes the guilt of the accused."

24. The Hon'ble Apex Court in the case of **Sahadevan Vs. state represented by Inspector of Police Chennai** reported in **(2003) 1 SCC 534** has held in para 24 as under:-

"24. It is then contended on behalf of the appellants that the police officers have no motive whatsoever to have committed the murder of Vadivelu and the prosecution case being one of circumstantial evidence, the benefit of doubt should be given to the appellants. We do not think it is possible to accede to this request of the appellants either. This Court had held in the case of circumstantial evidence that if the circumstances relied upon by the prosecution are proved beyond

doubt, then the absence of motive would not hamper a conviction. [See Mani Kumar Thapa (Supra)]"

In view of foregoing reasons, we do not find any force in the contention raised by learned counsel for the appellant.

25. Learned counsel for the appellant further contended that the appellant has also been convicted under Section 307 IPC for causing the fatal injuries on the person of Km. Uma. It was further contended that since injured Km. Uma was not examined before the he offence punishable under Section 307 IPC. Learned G.A refuted the contention. It is apparent from the record that Km. Uma had not been examined before the Court. She could be the best person to depose as to how she sustained the injuries on her person. In absence of the evidence of Km. Uma, it cannot be held that the appellant is liable to be convicted under Section 307 IPC. AS such, the Trial Court has erred in convicting the appellant under Section 307 IPC.

26. Considering the circumstances projected by the prosecution against the appellant as discussed above, the inevitable conclusion is that the circumstances are consistent with the hypothesis of the guilt for the accused under section 302 IPC. After perusal of the entire evidence and the circumstances projected by the prosecution, we are of the view that the prosecution has established the case against the appellant.

27. In view of the foregoing discussion, we are of the view that the appellant was rightly convicted under section 302 IPC for causing deaths of his wife and two sons. However, the conviction and sentence awarded by

the trial court under Section 307 IPC are liable to be set aside.

28. This Court vide order dated 06.07.2007 directed the Addl. Government Advocate to ascertain the whereabouts of the appellant. In compliance of the said order, the Government Advocate submitted a radiogram received from the Central Jail, Bareilly in which it has been mentioned that the appellant has served out the imprisonment for life and he has been released from jail on 16.08.2001 pursuant to the Uttarakhand G.O. No.1271/HOME/JAIL/2 dated 10.08.2001. In view of this, it would not be just and proper to sent him to jail again.

29. The appeal is partly allowed. The conviction and sentence awarded by the trial court against the appellant under Section 3078 IPC are set aside. However, the conviction and sentence awarded by the trial court against the appellant under Section 302 are confirmed. The impugned judgment and order passed by the trial court is modified accordingly. Since, the appellant has served the sentence awarded by the court, hence, there is no need to send him to jail again.

30. Let the lower court record be sent back to the court concerned.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**

Dated 23rd October, 2007
LSR / V.K.